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12-1-1949

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Recommended Citation

Richard Strichartz, *Legal Aspects of Municipal Incorporation in Florida*, 4 U. Miami L. Rev. 78 (1949)
Available at: <http://repository.law.miami.edu/umlr/vol4/iss1/10>

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LEGAL ASPECTS OF MUNICIPAL INCORPORATION IN FLORIDA

"No city was ever built with the sole object of being incorporated, but is incorporated as affording the best means of being well governed."

—*C. J. Marshall in McCulloch v. Maryland*

SCOPE

The population surge of transients fostered by the golden speculative era of the "twenties" is being replaced by a steady stream of permanent residents who are establishing the "new frontier" in Florida. This communal growth is reflected by the increased litigation in our courts concerning the problem of municipal incorporation.

The purpose of this study is to treat those problems which are faced by the Florida practitioner, and is not intended to be a comprehensive historical survey. Some of the material included in this article will deal with statutory requirements for municipal incorporation, as well as a consideration of the constitutional power of the state to create, abolish, and otherwise deal with municipalities. The problems will include the following poignant legal aspects of municipal incorporation:

- A. DEFINITION of a municipality.
- B. METHODS and REQUIREMENTS for incorporation.
- C. VALIDATION of the corporate existence.
- D. ATTACK on its right to exist; protection of creditors.
- E. DEFENSES available when subject to attack.
- F. TERRITORIAL problems in respect to boundaries, requirement of benefits to those included within the boundaries, and extension and enlargement.
- G. ABOLITION and DISSOLUTION of municipalities.

A. DEFINITION OF A MUNICIPALITY

*Mahood v. State*¹ turned to the New International Dictionary in defining a hamlet as a "little cluster of houses in the country"; a village as "any small aggregation of houses in the country, being in general less in number than a town or city and more than in a hamlet"; a town as "in general, any large collection of houses and buildings, public and private, constituting a distinct place with a name and not incorporated as a city."²

1. 101 Fla. 1254, 133 So. 90 (1931).

2. *Id.* at 1258, 133 So. at 92.

However, the statutes distinguish only as between cities and towns on the basis of the number of registered voters.³

By far the best definition of municipalities is the opinion of Mr. Justice Ellis in *State ex rel. Davis v. Lake Placid*⁴ where he said:

Population is essential to the creation of a municipal corporation. The corporate body is composed of inhabitants within the territorial limits of the municipality. . . . There must exist a village, a community of people, a settlement or a town occupying an area small enough that those living therein may be said to have such social contacts as to create a community of public interest and duty requiring, in consideration of the general welfare, an organized agency for the management of their local affairs of a quasi public nature.

The origin and history of the word "municipality" show beyond peradventure of a doubt that two elements are essential to its existence; a community of people, and the territory they occupy. The Legislature can create neither. A third element is also essential under our system of government. . . . That element is: Order. . . .

. . . problems of over-crowding, bad sanitary conditions, crowding of streets and public places, a condition now most common in even the smallest communities due to the popularity of the automobile and the failure to prevent the over-crowding and congestion of public thoroughfares, water supply and sanitation, cemeteries and drainage of low and swampy places, public buildings, and baths, were all problems of the ancient 'municipia' of the Empire of Rome.

These problems arose as the population of the towns or cities increased. So it is apparent that, before the legislative will may operate to establish a municipality, that is to say, to prescribe powers and duties for the governance of towns, villages, or communities, there must be in existence a town, village or community of people whose local public interests require in the orderly processes of government, orderly administration under state authority whose agencies they are in a broad sense.⁵

A city has variously been defined as a ". . . public institution for self-government and local administration of the affairs of state . . ."; or as an agent of the state for local administration of governmental affairs.⁷ It is not a political subdivision of the state as is the county;⁸ and has been considered a mere taxing agency.⁹ It has also been distinguished from quasi public corporations which possess only a portion of the powers, duties, and liabilities of municipal corporations.¹⁰ However, Jacksonville and Key West are under direct legislative control and are considered political subdivisions of the state.¹¹

3. FLA. STAT. § 165.02 (1941).

4. 109 Fla. 419, 147 So. 468 (1933).

5. *Id.* at 426, 147 So. at 470.

6. *Loeb v. Jacksonville*, 101 Fla. 429, 437, 134 So. 205, 207 (1931).

7. *Ibid.*

8. *Miami v. Rosen*, 151 Fla. 677, 10 So.2d 307 (1942); *Tampa v. Easton*, 145 Fla. 188, 198 So. 753 (1940).

9. *In re Fort Lauderdale*, 23 F. Supp. 229 (S. D. Fla. 1938).

10. *Forbes Pioneer Boat Line v. Board of Commissioners*, 77 Fla. 742, 82 So. 346 (1919).

11. FLA. CONST. Art. 8, §§ 9, 10.

Various theories have been advanced regarding the rational basis for municipal corporations. The *community thesis* requires an aggregation of people,¹² or more specifically, a settled community of residents.¹³ A *community* cannot exist where the lands sought to be incorporated are not contiguous.¹⁴

Another hypothesis is the *legal entity* concept. The theory demands that a municipality consist of population and defined areas with such governmental authority as may be conferred by law.¹⁵ A town or city may also be viewed as a legal personality or entity with the advantages of a quasi private corporation.¹⁶

The idea of *local self-determination* as to public regulations and choice of local officials has also been considered as an attribute of a municipality.¹⁷ Such local self-determination is subject to the plenary powers of the state legislature, except as restrained by the constitution.¹⁸

B. METHODS AND REQUIREMENTS FOR INCORPORATION

The legal requirements for the automatic formation of a municipality are to be found in the Florida Statutes.¹⁹ A 1947 act now makes it lawful for male and *female* inhabitants who are freeholders and registered voters, not less than twenty-five in number, to be allowed to proceed to establish for themselves a municipal government.²⁰ Approval of those proceedings must be by two-thirds of those whom it is proposed to incorporate.²¹ Distinction is made between cities and towns on the basis of population: a city is a unit where there are 300 registered voters within the designated limits to be incorporated, while a town has fewer registered voters.²² The law requires newspaper publication of a notice requiring all persons referred to above, residing within the proposed corporate limits, to assemble at a specific time and place to select officers and organize a municipal government.²³ However, in the absence of a newspaper of general circulation it requires as an alternative, the posting of such notice in three places of public

12. State *ex rel.* Davis v. Largo, 110 Fla. 21, 149 So. 420 (1933).

13. State *ex rel.* Attorney General v. Avon Park, 108 Fla. 641, 149 So. 409 (1933).
 ". . . an attempt to incorporate two distinct tracts of land as corporate territory under one government is unauthorized and void." Enterprise v. State, 29 Fla. 128, 145, 10 So. 740, 744 (1892).

14. Enterprise v. State, *supra* note 13.

15. Tampa v. Easton, *supra*. "Municipalities are legal entities, established for local governmental purposes, and they can exercise only such authority as is conferred by express or implied provisions of law." Waller v. Osban, 60 Fla. 268, 52 So. 970 (1910).

16. Kaufmann v. Tallahassee, 84 Fla. 634, 94 So. 697 (1923).

17. State *ex rel.* Johnson v. Johns, 92 Fla. 187, 109 So. 228 (1926).

18. *Ibid.*

19. FLA. STAT. §§ 165.01 *et seq.* (1941).

20. FLA. STAT. § 165.01 (Cum. Supp. 1947).

21. FLA. STAT. § 165.04 (Cum. Supp. 1947).

22. FLA. STAT. § 165.02 (1941); Hiers v. Mitchell, 95 Fla. 345, 116 So. 81 (1928).

23. FLA. STAT. § 165.03 (Cum. Supp. 1947).

resort within the immediate vicinity.²⁴ No minimum number of persons is required to sign the notice.²⁵

A resident of the designated area for which notice has been given of intention to incorporate, who opposes a movement of this sort, can serve his purposes best by not attending this organizational meeting, in the hopes that the minimum of twenty-five registered voters will not be present. The analogy is similar to a bond election which requires participation by a majority of the freeholders for approval. The bondholder in actuality has a double vote. Since by not voting in effect he casts a negative vote and may also prevent the necessary percentile participation of freeholders required to validate the election. As an example, where a charter calls for 60% participation of all freeholders and only 59% of them vote, the election would be invalidated despite the fact that there might be more than the necessary majority to have won the election. Similarly, the residents, by not taking part in the proceedings for municipal incorporation, may deny validity to the initial action of the twenty-five and the two-thirds majority requisite for final approval.

At the incorporation meeting following the approval of the formation of the municipality, the exact metes and bounds are agreed upon,²⁶ and a corporate name and seal selected by a vote of the majority of the participants.²⁷ A mayor and not more than nine nor less than five aldermen, to be known as the city council, and in whom control of the government is vested, shall be chosen by majority vote.²⁸ Provision for other officials is also included.²⁹ Their terms are to run for one year from the date of election or until their successors are elected and qualified.³⁰

The transcript of the meeting is prepared by the new city clerk who includes the notice of the meeting; the number of qualified electors present;³¹ the name, seal and territorial limits of the corporations; and the names of the elected officials.³² This is signed by the mayor and aldermen, attested to by the clerk and the corporate seal, and filed, to be entered on the public records, with the clerk of the circuit court in the county wherein the corporate limits are located.³³ Applicability of these provisions does not affect counties

24. *Ibid.*

25. *State ex rel. Buford v. Forrest Park*, 87 Fla. 477, 100 So. 735 (1924) (and see this case for time requirements of advertising notice). See, *State v. Winter Park*, 25 Fla. 371, 5 So. 818 (1889) (calculation of time requirements).

26. See TERRITORIES, *infra*.

27. FLA. STAT. § 165.04 (Cum. Supp. 1947).

28. *Id.*

29. *Id.*

30. *Id.*

31. FLA. STAT. § 165.07 (1941). Names of registered voters who took part in the meeting not required in transcript of proceedings. *State ex rel. Buford v. Forrest Park*, 87 Fla. 477, 100 So. 735 (1924).

32. FLA. STAT. § 165.07 (1941).

33. *Ibid.*

with a population of not less than 150,000 nor more than 250,000 according to the last preceding state census.³⁴

An additional method of incorporation is by special act of the legislature declaring a municipality to exist.³⁵ Such incorporation may be subject to approval of a majority of the registered voters and freeholders of the area to be incorporated.³⁶

C. VALIDATION OF THE CORPORATE EXISTENCE

Another important question that arises is that of a municipal corporation having its existence validated where there is a defect in organization. A general statute provides that if a city exists for a period of ten years prior to the time it is challenged, it is declared legally incorporated.³⁷ A second method of curing a defect is to go before the legislature and have a special act passed legitimatizing the municipality.³⁸ The defect in that event must be a procedural one which could have been dispensed with, and not substantive: ³⁹ "Unless there is a substantial compliance with such prescribed conditions [under the general statute] a 'community of persons' attempting to form a municipal corporation will never constitute and become a body corporate." ⁴⁰

Still another curative statute ⁴¹ validates the actions of officials of those cities which have qualified for validation by virtue of their prior existence.⁴² This is subject, however, to the limitation that there cannot be validation of an exercise of power where there would not have been such power had the city been legally existent in the first place.⁴³

D. ATTACK ON RIGHT OF MUNICIPALITY TO EXIST

Procedure

There are a number of avenues of procedure open in order to attack the validity of a municipal corporation. A proceeding in quo warranto by the attorney general in the name of the State of Florida is the one recommended and approved by the courts.⁴⁴ In a suit to enjoin the City of Ormond

34. FLA. STAT. § 165.29 (Cum. Supp. 1947).

35. FLA. CONST. Art. 3, § 21.

36. *Winter Haven v. State ex rel. Landis*, 125 Fla. 392, 170 So. 100 (1936).

37. FLA. STAT. § 165.23 (1941).

38. *State ex rel. Johnson v. Eddy*, 95 Fla. 978, 117 So. 377 (1928); *Knowlton v. St. Petersburg*, 111 Fla. 835, 150 So. 269 (1933) (annexation approved). *State v. North Bay Village*, 34 So.2d 876 (Fla. 1948) (incorporated by special act and validated by freeholders).

39. *Schultz v. State ex rel. Swearingen*, 80 Fla. 564, 86 So. 428 (1920).

40. *Farrington v. Flood*, 40 So.2d 462 (Fla. 1949).

41. FLA. STAT. § 165.24 (1941).

42. FLA. STAT. § 165.23 (1941).

43. *Beaty v. Inlet Beach*, 151 Fla. 495, 9 So.2d 735 (1942). *Contra: Sebring v. Harder Hall Inc.*, 150 Fla. 824, 9 So.2d 350 (1942).

44. *South Miami v. State ex rel. Gibbs*, 143 Fla. 524, 197 So. 109 (1940); *Morin v. Stuart*, 111 F.2d 773 (C. C. A. 5th 1940) (quo warranto not granted by federal court, but should be sought in state courts).

from selling liquor levied under distress warrant, the jurisdiction of the city was challenged on the alleged invalidity of corporate boundaries. It was held by the court that this question could be judicially determined only by quo warranto brought in the name of the Attorney General.⁴⁵ The same doctrine was asserted where the legal existence of the City of Stuart was challenged in a proceeding to foreclose delinquent tax liens.⁴⁶

What other remedies are open where the attorney general refuses to bring quo warranto? In *Farrington v. Flood*⁴⁷ the relief sought was for a decree to enjoin the alleged illegal incorporation of a city and to request a declaration of rights. In this instance the attorney general had refused to bring quo warranto. The court said that quo warranto would have been required if the community had a de facto existence; but since neither a de facto nor a de jure municipal corporation did exist, the individual freeholders could challenge its existence in a court of equity.⁴⁸ An act of the 1949 legislature⁴⁹ permits individual action where the attorney general refuses to bring quo warranto. By this law the scope of judicial inquiry has been greatly extended. The extent of this act has not yet been appreciated by individuals who wish to attack the existence of a municipal corporation.

A challenge as to the constitutionality of the actions of a municipality acting under color of legislative authority will usually receive the attention of the court. As an example, a legislative act creating a town which included lands not amenable to municipal benefits is subject to constitutional attack.⁵⁰ The approach is interesting because the device used to test the act was a declaratory decree. This procedure has not been utilized to any great extent in Florida despite the fact that the Declaratory Judgment Act⁵¹ is liberally drawn and liberally construed.⁵²

The broad grant of power to the legislature under Article 8 § 8 "... to establish and abolish municipalities . . ." ⁵³ has been interpreted as requiring observance of the Declaration of Rights, § 12.⁵⁴ This section limits the state so that it may not deprive a person of his property without due process of law

45. *Riviera Club v. Ormond*, 147 Fla. 401, 2 So.2d 721 (1941).

46. *Certain Lands v. Stuart*, 137 Fla. 784, 188 So. 605 (1939).

47. 40 So.2d 462 (Fla. 1949).

48. *Ibid*; *Bass v. Addison*, 40 So.2d 466 (Fla. 1949). The writ of quo warranto was denied to private individuals as a vehicle for action against other individuals who claimed to be officers of a municipal corporation. *Robinson v. James*, 14 Fla. 256 (1873). However, such a writ is available to a private individual who claims an elective office. *State ex rel. Wurn v. Kasserman*, 131 Fla. 234, 179 So. 410 (1938).

49. Laws of Florida 1949 c.25275, F. S. A. § 165.30 (Supp. 1949).

50. *Richmond v. Largo*, 155 Fla. 226, 19 So.2d 791 (1944).

51. FLA. STAT. §§ 87.01 *et seq.* (Cum. Supp. 1947).

52. See Uniform Declaratory Judgment Act, §§ 1, 12, 9 U. L. A. (Cum. Supp. 1948).

53. FLA. CONST.

54. *Ibid*. *State ex rel. Davis v. Largo*, 110 Fla. 21, 149 So. 420 (1933).

by abolishing a municipality.⁵⁵ Another constitutional aspect was announced in *State ex rel. Landis v. Lake Placid*⁵⁶ when the court said:

The case presented by the information now before us, independently of the correlators, is one in which the legislative act is challenged upon the ground that the Legislature, in view of the facts of which it is presumed to have had knowledge, disregarded the principle that its powers may be exercised only to promote the actual and potential needs and uses of the people in a limited area that would be appropriate to them in such area with proper regard for their requirements, and that a sparsely settled area not needed for municipal purposes is not within the purview of the legislative power to establish municipalities.⁵⁷

By this decision the court placed a restriction on the broad power of the legislature to incorporate areas not susceptible to municipal benefit. Hence, it would appear that in order to challenge a municipality some violation of a fair interpretation of the organic law must be invoked. In *State v. Stuart*⁵⁸ involving a legislative act establishing boundaries of a city the court declared that where "... gross and glaring territorial inequality . . ." ⁵⁹ exists, the extension of such boundaries would not be permitted merely to lighten the tax burden of the city dwellers. Statutes do not contemplate that the inhabitants of a village may take jurisdiction of a territory which is in no way part or parcel of the hamlet or village sought to be incorporated for: "When incorporated by the citizens, it [the village] became a de facto corporation only to the extent authorized by the legislative acts. . . ." ⁶⁰ Thus, the incorporation in *Leatherman v. Alta Cliff Co.*⁶¹ extended only to the village proper, and not to the territory which in no way could be considered a part of the village.

A taxpayer brought suit to enjoin assessment of his property which was included in a municipality. The court held that where the municipality had issued bonds despite the fact that the taxpayer's lands should never have been included, the bondholder acquired no lien on those lands.⁶² An act of the legislature enlarging the city can be challenged by a bill in equity to cancel municipal tax certificates provided there is no estoppel.⁶³ Collateral attacks, as such, on the validity of incorporation have met with little success, where they have been recognized. In a bond validation proceeding, protest was made on the ground of illegal incorporation. This question, the court held, was not

55. *Ibid.*

56. 117 Fla. 874, So. 497 (1935).

57. *Id.* at 882, 158 So. at 500.

58. 97 Fla. 69, 120 So. 335 (1929).

59. *Id.* at 109, 120 So. at 349.

60. *Leatherman v. Alta Cliff Co.*, 114 Fla. 305, 153 So. 845, 846 (1934).

61. *Ibid.*

62. *Durham v. Pentucket Groves*, 138 Fla. 386, 189 So. 428 (1939).

63. Estoppel found to exist where unexplained delay of 15 years. *General Properties Co. v. Rellim Inv. Co.*, 151 Fla. 136, 9 So.2d 295 (1942).

subject to litigation in a proceeding of this type.⁶⁴ Again, in a bill for injunction, the court said:

The bill attempts to assail the legality of a municipal corporation upon the ground that the corporation was not legally organized, and that consequently the assessment and levy of taxes by the authorities of the town were illegal, and could not be enforced. This position can not be maintained, because the legality of a municipal corporation cannot be called in question by bill for injunction, the complainant having its remedy at law by *quo warranto*.⁶⁵

However, where a landowner has land included in a municipal corporation he may appeal to equity to prevent taxation.⁶⁶ Taxation of land which was acquired after judgment of ouster was enjoined in a suit by a taxpayer, where the officials were levying the tax by virtue of a mandamus suit.⁶⁷ In a later suit it was held that purchasers of the land had the right to rely on the law as it existed (regarding requirement of municipal benefits where lands were primarily rural) and not void legislation attaching the land to a community.⁶⁸ This extends the concept of a bona fide purchaser to apply to the field of municipal corporations. A proceeding by petition of a party desiring to have his land excluded from the town's corporate limits is at law and can be reviewed only by writ of error, not by appeal.⁶⁹

E. DEFENSES AVAILABLE WHEN SUBJECT TO ATTACK

What defenses are available when the validity of incorporation is questioned? The three general defenses referred to by the courts are estoppel, laches and acquiescence.⁷⁰ Others are available depending upon the particular fact situation, such as legislative approval, collateral attack and tax sale.⁷¹

In *General Properties Co. v. Rellim Inv. Co.*⁷² there was estoppel in an unexplained delay of 15 years in challenging the enlargement act. Estoppel as a defense was rejected in another case despite the actions of complainants who had paid taxes and run for office.⁷³ However, where a statute was not illegally enacted, nor a violation of the constitution on its face, property owners whose lands were included within the city were estopped from questioning the validity of the act eight years after the enactment.⁷⁴

64. *Merrell v. St. Petersburg*, 74 Fla. 194, 76 So. 699 (1917).

65. *Bateman v. Florida Commercial Co.*, 26 Fla. 423, 425, 8 So. 51, 52 (1890).

66. *McPherson v. Lake Maitland*, 134 Fla. 720, 184 So. 487 (1938).

67. *Hughes v. Town of Davenport*, 141 Fla. 382, 193 So. 291 (1940).

68. *Town of Davenport v. Hughes*, 147 Fla. 228, 2 So.2d 851 (1941), *cert. denied*, 314 U. S. 681 (1941).

69. *Heebner v. Orange City*, 44 Fla. 159, 32 So. 879 (1902).

70. See cases cited n. 72 *et seq. infra*.

71. *Ibid.*

72. 151 Fla. 136, 9 So.2d 295 (1942).

73. *Eagle Lake v. Adams*, 146 Fla. 165, 200 So. 367 (1941).

74. *State ex rel. Landis v. Haines City*, 126 Fla. 561, 127 Fla. 239, 169 So. 383 (1936).

In a case where the attorney general failed to challenge the validity of a bond issue, the supreme court held that despite invalidation of the act because of an incomplete title, a de facto municipal corporation could create municipal debts.⁷⁵ Here it was the acquiescence by the attorney general which was applied against individual interests. The cases, however, are usually decided on their particular facts when dealing with acquiescence. There is little doubt that the length of time during which a person waits to present a complaint "... is a circumstance to be considered with others in determining whether or not he has, by his acquiescence, abandoned his objection."⁷⁶ The duty is not upon the state to challenge enlarged boundaries unless the rights of the public are adversely affected.⁷⁷

Laches was refused as a defense in *Coral Gables v. State ex rel. Watson*⁷⁸ where it was opined that "... an act void in its inception will not become valid by the passage of time."⁷⁹ There, the lands were very much non-contiguous. The distance separating the lands was eleven miles from the city to Biscayne Key, somewhat unimproved and wild, with no substantial municipal benefits, but still made subject to taxation. Thus, it was decreed that this special act of incorporation was invalid.

A waiver of rights may be found by a delay in the assertion of such rights.⁸⁰ Similarly, an ouster action sought on lands originally organized under general law in 1885, boundaries subsequently increased by an ordinance passed in 1887, which was validated by the legislature in 1909, created acquiescence.⁸¹

The constitutional requirement of notice was not present until 1938.⁸² Since the passage of this amendment the courts have required evidence that the notice provision was observed when the act was submitted to the legis-

75. *Coral Gables v. State ex rel. Gibbs*, 148 Fla. 671, 5 So.2d 241 (1941).

76. *Id.* at 676, 5 So.2d at 243. Sixteen years was too long a period of time to challenge a municipal corporation which had shown remarkable development. *Coral Gables v. Gibbs*, *supra* note 75; *State ex rel. Landis v. Coral Gables*, 120 Fla. 492, 163 So. 308 (1935) (eight year elapse of time too long). Bondholders were permitted to proceed against the owners of non-contiguous lands because the validity of the bond issue was not challenged. *U. S. ex rel. Brown-Crummer Inv. Co. v. North Miami*, 11 F. Supp. 69 (S. D. Fla. 1932), *aff'd*, 11 F. Supp. 73 (S. D. Fla. 1935).

77. *State ex rel. Landis v. Coral Gables*, *supra* note 76.

78. 38 So.2d 48 (Fla. 1948).

79. *Id.* at 50.

80. *State ex rel. Davis v. Eau Gallie*, 19 Fla. 579, 126 So. 124 (1930).

81. *Lake Maitland v. State ex rel. Landis*, 127 Fla. 653, 173 So. 677 (1937).

82. FLA. CONST. Art. 3, § 21, "... no local or special bill shall be passed, nor shall any local or special law establishing or abolishing municipalities, or provided for their government, jurisdiction and powers, or altering or amending the same be passed, unless notice of intention to apply therefor shall have been published in the manner provided by law where the matter or thing to be affected may be situated, which notice shall be published in the manner provided by law at least thirty days prior to introduction into the Legislature of any such bill."

ture,⁸³ and unless it can be shown to the satisfaction of the court that it was observed, the law will be held invalid.⁸⁴ One part of the amendment permits for waiver of the notice provision where a referendum was required before a legislative abolition took effect.⁸⁵

Statutes provide a method for the taxpayer to have his land excluded from a proposed annexation.⁸⁶ The mere fact that after the filing of the protest the annexation was completed by the city, pending disposition of the case by the circuit court, gave the city no right to proceed with annexation.⁸⁷ Lands within the boundaries of the municipal corporation which a court of competent jurisdiction held should not have been included by the legislature were not permitted to be taxed.⁸⁸

Protection of creditors

Under the Florida Constitution, Article 8, § 8 concerning the establishment and abolition of municipalities, it is required that "When any municipalities shall be abolished, provision shall be made for the protection of its creditors."⁸⁹ In keeping with the spirit of this provision the legislature has enacted a comprehensive statute⁹⁰ designed to insure payment by municipalities of their legal obligations at the time of dissolution.

Irregularities in organization were refused as a defense against the bondholders in a mandamus proceeding to compel payment of judgment on the bonds of a town.⁹¹ The creditors were protected when the court applied the doctrine of estoppel to the town and its officers who sold the bonds to bona fide holders by virtue of the town's colorable organization, and had collected taxes to pay the bonds.⁹²

Abolition of a town was inhibited where the legislature had not made provision for the municipality's creditors.⁹³ However, if the municipality abolished by the legislature is replaced by a newly created city, it succeeds to the rights and liabilities without the requirement of a specific legislative proviso.⁹⁴

What are the considerations that guide the courts when dealing with

83. *Harrison v. Wilson*, 120 Fla. 771, 163 So. 233 (1935).

84. *Ibid.*

85. FLA. CONST. Art. 3, § 21. *San Mateo v. State ex rel. Landis*, 117 Fla. 546, 158 So. 112 (1934).

86. FLA. STAT. 171.02 (1941).

87. *Orlando v. Orlando Water & Light Co.*, 50 Fla. 207, 39 So. 532 (1905).

88. *Pierson v. Long*, 103 Fla. 383, 137 So. 232 (1931).

89. FLA. CONST. Art. 8, § 8.

90. FLA. STAT. 165.28 (1941).

91. *U. S. ex rel. Horigan v. Heyward*, 98 F.2d 433 (C. C. A. 5th 1938).

92. *Ibid.*

93. *Humphreys v. State ex rel. Palm Beach Co.*, 108 Fla. 92, 145 So. 858 (1933).

94. *State v. Goodgame*, 91 Fla. 871, 108 So. 836 (1926). In a case where the legislature had abolished South Miami by special act the general statute governing the payment of debts was not applied, *State ex rel. Landis v. Peacock*, 112 Fla. 671, 151 So. 4 (1933), and for this failure the act was held invalid.

de facto municipal corporations? If a de facto city existed at the time the bonds were issued, and the city is ousted from lands, the subsequent municipal corporation may be liable.⁹⁵ The leading case on de facto indebtedness is *Ocean Beach Heights v. Brown-Crummer Inv. Co.*⁹⁶, where the original judgment was to require officers of a municipality to levy taxes on non-contiguous lands included in the original incorporation from which they had since been ousted by the state supreme court.⁹⁷ In its decision, the United States Supreme Court adopted the theory of the highest Florida appellate court, and held that where no de jure basis existed for incorporation, there could be no de facto existence to burden lands illegally included.⁹⁸

F. TERRITORIAL PROBLEMS

Boundaries

For a municipal corporation to be valid its boundaries must be fixed and certain, for without these prerequisites it has no existence.⁹⁹

Where a municipality is self-organized the statutes require that at the organizational meeting the voters, after selecting the corporate name and seal, ". . . designate by definite metes and bounds the territorial limits. . . ." ¹⁰⁰ It is further required that the territorial limits be embodied in the transcript of proceedings of the organizational meeting ¹⁰¹ along with other information. The description of the boundaries in the notice of the meeting and in the resolution of incorporation must correspond, and be complete and definite.¹⁰² But boundaries may be definite enough to be established even though not clear,¹⁰³ and this construction has been adopted as apparently comporting with the manifest intent of the statutes.¹⁰⁴

In order to be held valid, two municipal corporations cannot exist at the same time over the same territory.¹⁰⁵ This, however, refers to *legal* and

95. *Largo v. Richmond*, 109 F.2d 740 (C. C. A. 5th 1940), *cert. denied*, 311 U. S. 663 (1940).

96. 302 U. S. 614 (1937), *reversing* 87 F.2d 978 (C. C. A. 5th 1937).

97. *Leatherman v. Alta Cliff Co.*, 114 Fla. 305, 153 So. 845 (1934); *Mahood v. State*, 101 Fla. 1254, 133 So. 90 (1931).

98. *Ocean Beach Heights v. Brown-Crummer*, 302 U. S. 614 (1937).

99. ". . . it is essential that it should have ascertained and well-defined boundaries. . . ." *Enterprise v. State*, 29 Fla. 128, 132, 10 So. 740, 744 (1892); *Winter Haven v. State ex rel. Landis*, 125 Fla. 392, 170 So. 100 (1936).

100. FLA. STAT. § 165.04 (Cum. Supp. 1947).

101. FLA. STAT. § 165.07 (1941). Where the incorporators made an attempt to meet the requirements of recording the proceedings on the public books, this would be evidence of good faith on their part. *See Merrell v. St. Petersburg*, 74 Fla. 194, 197, 76 So. 699, 700 (1917).

102. *State ex rel. Johnson v. Owens*, 92 Fla. 356, 109 So. 423 (1926).

103. *P'Pool v. State ex rel. Johnson*, 93 Fla. 378, 112 So. 59 (1927); *State ex rel. Johnson v. Sarasota*, 92 Fla. 563, 109 So. 473 (1926).

104. *Lane v. State ex rel. Attorney General*, 63 Fla. 220, 57 So. 662 (1912).

105. *State v. Winter Park*, 25 Fla. 371, 5 So. 818 (1889); *Enterprise v. State*, 29 Fla. 128, 10 So. 740 (1892).

effective corporations; and does not apply where one of them is a *de facto* corporation without rights.¹⁰⁶

In addition to jurisdiction over all land, the statute empowers all cities and towns to have "... full force and effect over the waters of all rivers, creeks, harbors or bays contained within the corporate limits."¹⁰⁷ But this power has been somewhat limited by a decision declaring that municipalities cannot regulate fishing unless it is expressly provided for in its charter.¹⁰⁸

It is generally agreed that there is no statutory authority for inhabitants of a town to create a municipal corporation embracing a territory not contiguous to such town.¹⁰⁹ The supreme court indicated, as early as 1912, that there would be no violation of the Florida Constitution where territory described in a special act covered non-contiguous lands.¹¹⁰ It has since said that inhabitants cannot incorporate non-contiguous lands, but that a special act of the legislature may permit it.¹¹¹ This was in effect overruled by *Coral Gables v. State ex rel. Watson*,¹¹² where one of the grounds for holding a special act of the legislature invalid was non-contiguity. This has its limitation, where no benefit would be received by a property owner, and any taxes he would be required to pay would be a deprivation of due process of law.¹¹³

When the town of North Miami incorporated an area containing non-connected land on each side of Biscayne Bay, it was held that the inclusion of such lands did not render the incorporation proceedings wholly void.¹¹⁴ The circuit court of appeals, in another case, held that an ouster applied only to that territory east of Biscayne Bay.¹¹⁵

Benefit Test

A major problem arises when either the legislature or an incorporating group attempts to include land which neither is, nor in all likelihood ever will be, susceptible to municipal benefits. That this has been a troublesome question is attested to by the number of cases in which our highest court has decided on this particular issue.¹¹⁶

Pertinent examples of the high court's actions are the exclusion of wild,

106. *State v. Winter Park*, 25 Fla. 371, 5 So. 818 (1889).

107. FLA. STAT. § 165.09 (1941).

108. *Ex parte Guthrie*, 147 Fla. 66, 2 So.2d 121 (1941).

109. *Leatherman v. Alta Cliff Co.*, 114 Fla. 305, 153 So. 845 (1934); *Mahood v. State*, 101 Fla. 1254, 133 So. 90 (1931).

110. *Lane v. State*, 63 Fla. 220, 57 So. 662 (1912).

111. *Winter Haven v. A. M. Klemm & Son*, 132 Fla. 334, 181 So. 153 (1938).

112. *Supra*.

113. FLA. CONST. DECLARATION OF RIGHTS § 12.

114. *Heyward v. Hall*, 144 Fla. 344, 198 So. 114 (1940).

115. *North Miami v. Meredith*, 121 F.2d 279 (C. C. A. 5th 1941), *cert. denied* 314 U. S. 674 (1941); 12 U. OF CINN. L. REV. 107 (1938).

116. See cases cited n. 117 *et seq. infra*.

unimproved, unoccupied, and unbenefited lands;¹¹⁷ unsettled or sparsely settled lands far removed from the municipality's actual boundaries;¹¹⁸ lands consisting chiefly of orange groves, farms, or gardens;¹¹⁹ and lands not amenable to municipal services.¹²⁰ They have similarly ruled invalidity where there was little or no population within the incorporated area,¹²¹ or where the area was included solely to lighten the tax burden of city dwellers.¹²²

Following this pattern, the high court stated:

A large territory many hundreds of times greater than the vicinity occupied by the inhabitants of a village, including only rural or farm lands, cattle ranges, fruit groves, and forests where the scattered population derives no advantage, benefit, aid or privileges from the local government of the town proper was never in the history of the subject deemed either necessary, convenient or expedient to local government. Nor does power to establish municipalities embrace the power to designate such areas as boundaries of a municipality in anticipation of the coming of great numbers of people as visitors or permanent residents to enjoy the pleasures proposed to be afforded by development enterprises on the part of private land owners of such areas for profit.¹²³

It is interesting to note the bases of the supreme court's power to oust municipalities from jurisdiction over unbenefited lands. Neither the constitution, nor the statutes, expressly declare that land unsuited for municipal purposes is subject to removal from the territorial limits of a city. In the absence of constitutional restrictions, the legislative power to extend or contract municipal boundaries is unlimited.¹²⁴ However, judicial decision has limited this power to the non-violation of the fair interpretation of the organic law.¹²⁵ In a leading case on this point, *State ex rel. Attorney General v. Avon Park*,¹²⁶ the court expressed itself in the following words:

117. *State ex rel. Landis v. Boca Raton*, 129 Fla. 673, 177 So. 293 (1937); *Auburndale v. State ex rel. Landis*, 135 Fla. 172, 184 So. 787 (1938); *State ex rel. Attorney General v. Avon Park*, 108 Fla. 641, 149 So. 409 (1933); *Winter Park v. State ex rel. Attorney General*, 119 Fla. 343, 161 So. 386 (1935).

118. *State ex rel. Landis v. Lake Placid*, 121 Fla. 839, 164 So. 531 (1935); *State ex rel. Landis v. Lake Placid*, 117 Fla. 874, 158 So. 497 (1935); *Coral Gables v. State ex rel. Watson*, 38 So.2d 48 (Fla. 1948).

119. *State ex rel. Davis v. Largo*, 110 Fla. 21, 149 So. 420 (1933).

120. *McCombs v. West*, 155 F.2d 601 (C. C. A. 5th 1946); *Richmond v. Largo*, 155 Fla. 226, 19 So.2d 791 (1944); *Smith v. Montverde*, 38 So.2d 135 (Fla. 1948) (where lands not susceptible to benefits because of distance).

121. *State ex rel. Davis v. Lake Placid*, 109 Fla. 419, 147 So. 468 (1933); *But cf.* *State v. North Bay Village*, 160 Fla. 388, 34 So.2d 876 (1948).

122. *State v. Stuart*, 97 Fla. 69, 120 So. 335 (1929).

123. *State ex rel. Davis v. Lake Placid*, 109 Fla. 419, 428, 147 So. 468, 471 (1933).

124. FLA. CONST. Art. 8 § 8.

125. *Richmond v. Largo*, 155 Fla. 226, 19 So.2d 791 (1944); *Winter Haven v. A. M. Klemm & Son*, 132 Fla. 334, 181 So. 153 (1938); *Harrington v. Pompano*, 136 Fla. 730, 188 So. 610 (1938); *State ex rel. Landis v. Boynton Beach*, 129 Fla. 528, 177 So. 327 (1937); *State ex rel. Landis v. Lake Placid*, 117 Fla. 874, 158 So. 497, 121 Fla. 839, 164 So. 531 (1935); *State ex rel. Davis v. Lake Placid*, 109 Fla. 419, 147 So. 468 (1933); *State ex rel. Davis v. Largo*, 110 Fla. 21, 149 So. 420 (1933); *State ex rel. Attorney General v. Avon Park*, 108 Fla. 641, 149 So. 409 (1933); *State v. Stuart*, 97 Fla. 69, 120 So. 335 (1929).

126. *Supra* note 125.

Certainly, when the present Constitution was adopted, permitting special legislation for the incorporation of municipalities, it was not the intent of the organic or statutory law of the state, or the practice thereunder, that there should be included in a municipality relatively large areas of wild or unoccupied lands wholly unsuited for and not desirable or needed for municipal purposes, with no reasonable hope of municipal expansion to cover any considerable portion of the unoccupied or unimproved land included in or added to the municipality.¹²⁷

Another case decided later the same year reiterated the court's position in the *Avon Case* by declaring an extension of boundaries by the legislature void as not being within the ordinary meaning and purposes of the constitution.¹²⁸ The basis for ruling a violation of the constitution was taxation without the requisite benefit to the land taxed.¹²⁹

What test is applied by the courts to determine whether or not a given piece of territory is benefited by inclusion within the bounds of a municipal corporation? In *State ex rel. Landis v. Boynton Beach*¹³⁰ proceedings were brought to test the validity of a legislative incorporation of an area three miles long by one mile wide, one-third of which was under water. The habitable area contained eleven houses and some forty people. The legislature added insult to injury by saddling the area with a debt of \$500,000. Obviously, the court had no alternative but to declare this abuse of legislative power as void *ab initio*. But, the case is valuable as setting up a test, though a somewhat indefinite one, as to when land is benefited: "The test of what lands should be embraced in the municipality is determined by the benefits that may be returned to it, and when these are absent, there is no theory on which it can be included."¹³¹ The previous test had been one of common sense, to determine if the boundaries as set up were fair.¹³² Gross and glaring inequality was not to be tolerated.¹³³

This benefit test has been applied in several recent cases in determining whether or not lands are reasonably susceptible to municipal development.¹³⁴ It should be pointed out that the benefit doctrine does not completely restrict the growth of municipalities. Nor is it intended to convey the idea that any lands which may not now be receiving the benefits of their inclusion within a city or town should be immediately removed. In an important decision, the supreme court asserted that the constitution ". . . contemplates that vacant

127. *State ex rel. Attorney General v. Avon Park*, 108 Fla. 641, 656, 149 So. 409, 414 (1933).

128. FLA. CONST. Art 8, § 8; and a violation of § 12 of the DECLARATION OF RIGHTS, FLA. CONST.

129. *Ibid.*

130. 129 Fla. 528, 177 So. 327 (1937).

131. *Id.* 532, 177 So. at 329.

132. *State v. Stuart*, 97 Fla. 69, 120 So. 335 (1929).

133. *Ibid.*

134. *Richmond v. Largo*, 155 Fla. 226, 19 So.2d 791 (1944); *Smith v. Montverde*, 38 So.2d 135 (Fla. 1948).

lands adjacent to improved lands may be incorporated to meet the needs of the municipality for future reasonably expected growth and authorized activities." ¹³⁵ That this interpretation should not be construed as violating basic rights, the court further declared, "When unimproved lands are duly incorporated to meet the reasonable needs of future municipal expansion and authorized activities, the organic property rights of the owners of such unimproved lands may be conserved by *just* valuation of such lands for municipal taxation purposes, as required by Section 1, Article IX, Constitution, when such lands have only potential or contingent value for lawful municipal purposes." ¹³⁶

There is a further question as to whether incorporation of unbenefited lands is per se void or must be declared so by the courts. Conflict exists among the authorities on this point. In each case the legislature apparently has abused its power by incorporating totally unbenefited lands. The better view would seem to be that such abuse would be per se an invalid exercise of legislative power, void *ab initio*, which could be moved against at any time irrespective of any act or acts on the part of the correlators.¹³⁷ This is subject to the limitation that if there be remote or prospective benefits of any consequence, the courts will be prone to hold otherwise. There can be no reconciliation between this view and a more recent holding that statutory enactments of this type are prima facie valid since the legislature has power to incorporate lands into municipal corporations, and that it is therefore necessary that the courts *adjudge* the enactment invalid where there has been an abuse.¹³⁸ Under this latter doctrine, a de facto municipal corporation created by a legislative act, has a presumption of validity.

If an incorporated municipality wishes to exclude from its corporate limits any of its territory, it may do so by complying with the statutes.¹³⁹ Briefly, the requirements call for the passage of an ordinance, and an election by the registered voters in the remaining area of the city or town, approving or disapproving said ordinance. An affirmance by two-thirds of the registered voters, actually casting ballots, is necessary if the exclusion is to be effective.¹⁴⁰

Where the inhabitants of a certain area desire exclusion, *limited* provisions are made.¹⁴¹ The statutes make provision for such detachment *only* where the incorporated town contains less than 150 qualified electors.¹⁴² In

135. *Winter Haven v. A. M. Klemm & Son*, 141 Fla. 75, 86, 192 So. 646, 651 (1939).
See, State v. Avon Park, 108 Fla. 641, 656, 149 So. 409, 414 (1933).

136. *Id.* at 83, 192 So. at 651.

137. *State ex rel. Landis v. Lake Placid*, 121 Fla. 839, 164 So. 531 (1935);
Auburndale v. State ex rel. Landis, 135 Fla. 172, 184 So. 787 (1938).

138. *State ex rel. Harrington v. Pompano*, 136 Fla. 730, 188 So. 610 (1938).

139. FLA. STAT. 171.01 (1941).

140. *Ibid.*

141. FLA. STAT. § 171.02 (1941).

142. *Ibid.*

determining whether or not there are 150 qualified electors, only those registered and otherwise qualified at the time of filing suit are to be included.¹⁴³ The burden of proving the lack of 150 qualified voters, so as to meet the jurisdictional requirements, rests upon the petitioners.¹⁴⁴ If the statutory provision can be complied with and the lands are not being benefited commensurately to the price of incorporation, the landowners may petition the circuit court for a hearing at which time the lands may be excluded.¹⁴⁵ The statute has been held to deal only with self-abolition of those lands of small communities which never should have been incorporated because of the lack of satisfactory benefit for the taxes imposed.¹⁴⁶

When exclusion has been granted under the general statutes, the citizens of the excluded area are thereby released from all debts, duties, or liabilities of the town.¹⁴⁷ All municipally owned property, rights, and franchises existing as of the time of exclusion remain the property of the town.¹⁴⁸

Extension and Enlargement

There are two ways in which the territorial area of a municipal corporation may be increased: Extension by special act of the legislature, and enlargement by the municipality under general legislative authorization. The choice of means depends upon the particular local situation. In the event that the legislature is about to assemble, a special act is a more convenient method because local acts are practically assured of passage when presented by the local representatives. However, since the legislature meets biennially, there may be occasions on which it is more expeditious to follow the general procedure set up by the statutes.¹⁴⁹

Article 8 § 8 of the constitution¹⁵⁰ is a grant of power to the legislature to control municipalities and ". . . to alter or amend. . ." ¹⁵¹ their jurisdiction and powers at any time. This provision is not violative of the due process clause of the Federal Constitution where a special act of the legislature is involved.¹⁵²

143. *Ocoee v. West*, 102 Fla. 277, 130 So. 9 (1930).

144. *Lake Maitland v. Carleton*, 103 Fla. 583, 137 So. 707 (1931).

145. FLA. STAT. § 171.02 (1941).

146. *Durham v. Pentucket Groves*, 138 Fla. 386, 189 So. 428 (1939). Where the requisite benefit was not to be found, a circuit court decree of ouster was not disturbed. *Ormond v. Shaw*, 50 Fla. 445, 39 So. 108 (1905); *Phillips v. Altamonte Springs*, 92 Fla. 862, 110 So. 460 (1926) (procedure for detachment under the general law was sustained though brought by only a single landowner). *But cf.*, *Jacksonville v. L'Engle*, 20 Fla. 344 (1883) (where the circuit court failed to take into consideration possible benefits accruing to the land, exclusion was declared an abuse).

147. FLA. STAT. § 171.03 (1941).

148. *Ibid.*

149. FLA. STAT. §§ 171.04 *et seq.* (1941).

150. FLA. CONST.

151. *Ibid.*

152. *Clay v. City of Eustis*, 7 F.2d 141 (S. D. Fla. 1925), *appeal dismissed*, 273 U. S. 781 (1927).

What limits are placed upon the constitutional grant of power to control municipalities? The Florida Supreme Court held that in the absence of constitutional restriction the legislative power to extend municipal boundaries is unlimited subject to the fair interpretation of the organic law.¹⁵³

In the leading case of *State v. Sarasota*,¹⁵⁴ the court declared that the mere extension of boundaries was not per se unconstitutional, though it included uninhabited land.¹⁵⁵ This was followed in another decision, upholding the legislature's *plenary* power subject to deprivation of constitutional rights when it changed the boundaries of the municipal corporation.¹⁵⁶

Enlargement of a municipal area by a municipality is prescribed in the statutes.¹⁵⁷ The mode of annexation depends upon the number of registered voters. If there are less than ten registered voters in the area to be annexed, then a mere passage of an ordinance together with due notice by newspaper publication or conspicuous display for thirty days¹⁵⁸ will suffice. Protests by the landowners included in the proposed annexation, must be filed with the circuit court together with the grounds for objection.¹⁵⁹ Where there are ten or more registered voters, an election majority of two-thirds of the resident registered voters, actually voting, must approve the ordinance.¹⁶⁰ The procedure is changed for cities of over ten thousand inhabitants.¹⁶¹ Voters of the entire area to be included in the new city limits must approve the change by a two-thirds majority of the votes cast.¹⁶²

In the particular application of these statutes some confusion is to be noted. Municipal boundaries may not be extended under the general law of annexation, unless the municipality was organized under the general incorporation laws and not under a special law fixing its boundaries.¹⁶³ Where, despite the protest filed by the residents of a tract which the city proposed to annex, it proceeded, nevertheless, to annex the land, the proceeding was nullified.¹⁶⁴ Another case decided that where a town was originally defectively incorporated under the general act, and such defect was cured by a special ratifying act of the legislature, it had no authority to extend its territory by ordinance.¹⁶⁵ The legislature, too, may not add lands which the city had invalidly attempted to add, unless it complies with the constitutional pro-

153. *State v. City of Stuart*, 97 Fla. 69, 120 So. 335 (1929).

154. 92 Fla. 563, 109 So. 473 (1926).

155. *State ex rel. Davis v. Clearwater*, 106 Fla. 761, 139 So. 377 (1932), *aff'd.*, 106 Fla. 761, 108 Fla. 635, 146 So. 836 (1933).

156. *State v. Fort Lauderdale*, 102 Fla. 1019, 136 So. 889 (1931).

157. FLA. STAT. § 171.04 (1941).

158. *Ibid.*

159. *Ibid.*

160. *Ibid.*

161. FLA. STAT. § 171.05 (1941).

162. *Ibid.*

163. *State v. Homestead*, 100 Fla. 354, 130 So. 28 (1930); *Beaty v. Inlet Beach*, 151 Fla. 495, 9 So.2d 735 (1942).

164. *Orlando v. Orlando Water & Light Co.*, 50 Fla. 207, 39 So. 532 (1905).

165. *Klich v. Miami Land Co.*, 139 Fla. 794, 191 So. 41 (1939).

tection of property.¹⁶⁶ It has been properly held that the legislature may confirm an expansion by city ordinance though the statute was not followed.¹⁶⁷

There is a provision by which one municipality may annex, or be annexed, to a contiguous municipality.¹⁶⁸ All that is necessary is the adoption of an ordinance, by one town which is approved by the other, and the submission to the electors of the communities concerned for approval by a two-third majority of the votes cast.¹⁶⁹

When an act contained inaccuracies in the descriptions of the annexed territory, this did not render it invalid.¹⁷⁰ Nor was the validity of the enactment "... dependent upon the consent of inhabitants of the annexed territory."¹⁷¹ Merely because the extended boundaries include a considerable area of uninhabited and unimproved lands does not, in and of itself, render the extending act unconstitutional.¹⁷² But where the legislature had fixed the boundaries, that determination would have no effect on future legislation, or on the citizen acting under his constitutional rights.¹⁷³ In *Nabb v. Andreu*,¹⁷⁴ the plaintiff asserted the theory that since the land, which was proposed for annexation, had not approved the extension despite the majority approval by the annexing municipality that the land to be annexed had a veto power. The court rejected this, saying that the legislature has the privilege of prescribing the mode of annexation since it could have extended the boundaries by legislative act under its plenary power.¹⁷⁵

G. ABOLITION AND DISSOLUTION

The constitutional source of power in the legislature "... to abolish ... municipalities ..." ¹⁷⁶ is found in Article 8, § 8. It is limited by Article 3, § 21 ¹⁷⁷ which contains the notice requirement for local laws. Aside from the provision protecting creditors,¹⁷⁸ the cases deal with claims for office and for property of the abolished city. Dissolution, on the other hand, is the

166. *State ex rel. Davis v. Pompano*, 113 Fla. 246, 151 So. 485 (1933) (since the municipal ordinance was superseded by the legislative act, it was not considered by the court).

167. *Sebring v. Harder Hall*, 150 Fla. 824, 9 So.2d 350 (1942).

168. FLA. STAT. 171.09 (1941).

169. *Ibid.* When there is a new municipal corporation to take its place, "... the corporation to which it is annexed, or in which it is merged, is entitled to all its property, and is answerable for all its liabilities." *State ex rel. Gibbs v. Couch*, 139 Fla. 353, 370, 190 So. 723, 728 (1939).

170. *MacGuyer v. Tampa*, 89 Fla. 138, 103 So. 418 (1925).

171. *Id.* at 140, 103 So. at 421.

172. *State ex rel. Davis v. Clearwater*, 106 Fla. 761, 108 Fla. 635, 146 So. 836 (1933).

173. *Kirklands v. Town of Bradley*, 104 Fla. 390, 139 So. 144 (1932).

174. 89 Fla. 414, 104 So. 591 (1925).

175. *Ibid.*

176. FLA. CONST.

177. FLA. CONST.

178. FLA. CONST. Art. 8, § 8.

voluntary action by the people of a community to surrender their communal status. The procedure for dissolution is statutory.¹⁷⁹

An elected official may lose his office by legislative abolition.¹⁸⁰ There is no vested right in a municipal office by virtue of election, even where there was no time interval between abolition of old municipal corporations and the establishment of a new one.¹⁸¹ Justice Brown questions, as a deprivation of local self-government, the right of the legislature to legislate out of office the elected governing board, and to replace it with a new body appointed by the governor.¹⁸²

What happens to the property of the abolished municipality? The constitution provides by Art. 8, § 8 that "when any municipality shall be abolished, provision shall be made for the protection of its creditors." In a case where three municipalities were replaced by one city, the creditors were taken care of since the new municipal government succeeded to the rights and liabilities.¹⁸³

Legislative abolition, made subject to local referendum, before becoming effective, is perfectly constitutional,¹⁸⁴ insofar as it does not violate delegation of powers. The legislature is not without authority to abolish a city and recreate it with a larger area, placing the debt load on the larger city where the larger city issues most of the bonds.¹⁸⁵ In *State v. Boynton Beach*¹⁸⁶ the legislature had created a new town of Boynton Beach out of the old town. Creditors of the old town were directed by the legislature to look to the newly formed town for 50% of the old town's debts. It was held that where approved by the inhabitants, a bond issue is a valid means of providing for payment of the old debts as required by the legislature.

"It is generally recognized that there is no restriction on the legislative power to create municipal corporations and to determine their rights, powers, and liabilities unless it be found in the Constitution of the state. It is likewise universally held that, upon the creation of a new municipal corporation by division of an existing one and the setting up of the new one out of parts of the territory and inhabitants of the old, the Legislature may provide for an equitable apportionment or division of properties between the two corporations, and may impose upon the people and territory disannexed from the old an obligation to pay an equitable proportion of the existing debts outstanding at the time the division is made."¹⁸⁷

The statutes concerning dissolution require an election to be held on

179. FLA. STAT. 165.26 (1941).

180. *State ex rel. Watson v. Crooks*, 153 Fla. 694, 15 So.2d 675 (1943).

181. *State ex rel. Gibbs v. Couch*, 139 Fla. 353, 190 So. 723 (1939).

182. *Id.* at 360, 190 So. at 733.

183. *State v. Goodgame*, 91 Fla. 871, 883, 108 So. 836, 840 (1926). When there is a new municipal corporation to take its place, "... the corporation to which it is annexed, or in which it is merged, is entitled to all its property, and is answerable for all its liabilities."

184. *San Mateo City v. State ex rel. Landis*, 117 Fla. 546, 158 So. 112 (1934).

185. *State v. Tarpon Springs*, 138 Fla. 649, 190 So. 19 (1939).

186. 116 Fla. 534, 156 So. 539 (1934).

187. *State v. Boynton Beach*, 116 Fla. 534, 536, 156 So. 539, 540 (1934).

the question upon petition of one-third of the registered voters of the municipal corporation.¹⁸⁸ A city which was organized under a special act may be dissolved under authority of the general act.¹⁸⁹ This differs in approach from the question of extending the boundaries of the municipality created by special law where an extension under the general law was forbidden.¹⁹⁰ The rest of the statutory requirements deal with certification of the election result¹⁹¹ and with payment of debts by assessing the dissolved town's property.¹⁹²

CONCLUSION

Municipal corporations are creatures of the state and depend upon the constitution and/or the statutes for their establishment, power, and continued existence. The Florida Constitution directs the legislature to establish a uniform system of municipal government, but has allowed exceptions based upon population.¹⁹³ However, this entire provision has been interpreted as merely being directory and not mandatory.¹⁹⁴ Therefore, until the legislature enacts a uniform system, it has the authority to deal with each problem of municipal government by local or special laws. It follows that until the legislature shall establish the uniform system contemplated by Article 3, § 21,¹⁹⁵ it may continue the crazy-quilt pattern of special and local laws, establishing, regulating, abolishing and otherwise confusing the status of municipal corporations. In the event that a uniform system were established, such existing local or special laws would not be abrogated despite their inconsistency with the general classification.

However, there is a conflict within the constitution itself in regard to Article 8, § 8¹⁹⁶ which grants the legislature power to "... establish, and to abolish, municipalities [and] to provide for their government . . . and to alter and amend the same at any time."¹⁹⁷ The 1934 mandate to establish a uniform system of municipal government, and the broad plenary powers of the constitution to establish and abolish municipalities, can only be reconciled if the 1934 amendment is viewed as a limitation on the *plenary* power of the legislature. In view of these conflicting provisions of the constitution, it becomes apparent that there is further need for constitutional clarification¹⁹⁸ if the Florida law of Municipal Corporations is to have some consistency.

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188. FLA. STAT. § 165.26 (1941).

189. *Olds v. State*, 101 Fla. 218, 133 So. 641 (1931).

190. *State v. Homestead*, 100 Fla. 354, 130 So. 28 (1930).

191. FLA. STAT. § 165.27 (1941).

192. FLA. STAT. § 165.28 (1941).

193. FLA. CONST. Art. 3, § 24.

194. *State ex rel. Attorney General v. Avon Park*, 108 Fla. 641, 149 So. 409 (1933).

195. FLA. CONST.

196. *Ibid.*

197. FLA. CONST. Art. 8, § 8.

198. David, *The Case for Constitutional Revision in Florida*, 3 MIAMI L. Q. 225 (Feb. 1949).